

## PATENT

**REMARKS**

In the Office Action, claims 1-3 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,846,195 to Alt.

In the Office Action, claims 4-35 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,846,195 to Alt as applied to claims 1-3 above, in view of U.S. Patent No. 6,104,949 to Pitts Crick et al.

In the Office Action, claims 1-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,351,672 to Park et al. in view of U.S. Patent No. 6,104,949 to Pitts Crick et al.

In response thereto, new claim 36 has been added. Accordingly, claims 1-36 are now pending. Following is a discussion of the patentability of each of the pending claims.

**Preliminary Matter**

A terminal disclaimer in compliance with 37 CFR Section 1.321(c) and signed by the undersigned attorney is enclosed herewith that obviates the above double patenting rejection. Accordingly, it is respectfully submitted that the rejection of claims 1-35 be withdrawn.

**Independent Claim 1**

Claim 1 recites an implantable cardiac device being programmed to promote intrinsic rhythm when a patient transitions from a comparatively less upright posture to a comparatively more upright posture. In accordance with the specification, if the patient is in intrinsic rhythm when transitioning to a more upright position, the cardiac device disables administration of an increased pacing rate for a programmed duration. In this manner, the patient will experience a more natural variation in heart rate during transition from the less upright posture to the more upright posture (e.g., from supine to

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sitting or standing). This may allow a more natural vasoconstrictive response, leading to the reduced blood pressure drop. On the other hand, if the patient is being paced during the transition, the cardiac device may immediately administer an increased base rate or trigger an orthostatic response algorithm.

The Alt et al. reference discloses an implantable medical device that increases pacing rate when an orthostatic phenomenon is experienced.

The Alt et al. reference does not disclose or suggest promoting intrinsic rhythm when a patient transitions from a comparatively less upright posture to a comparatively more upright posture. As stated previously, the pacemaker abruptly increases its pacing rate upon postural transition. The Alt et al. reference does not address the concept of postponing an increase in pacing rate to allow a more natural vasoconstrictive response.

The Pitts Crick et al. reference is directed to diagnosis and treatment of congestive heart failure. By correlating changes in posture with trans-thoracic impedance changes, the degree of congestive heart failure can be assessed. A programmer communicates with a programmer interface block (43) to obtain data which is transferred to storage (39) for use in analyzing system conditions, patient information and changing pacing conditions if warranted.

The Pitts Crick et al. reference does not disclose or suggest promoting intrinsic rhythm when a patient transitions from a comparatively less upright posture to a comparatively more upright posture. The Pitts Crick et al. reference addresses the issue of proper treatment by stating that pacing conditions are changed if warranted. Nowhere does it state a particular type of treatment such as postponing an increase in pacing rate to allow a more natural vasoconstrictive response. Furthermore, the Pitts Crick et al. reference is directed to diagnosing and treating congestive heart failure whereas the present application is directed to diagnosing and treating orthostatic hypotension.

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Accordingly, it is respectfully submitted that claim 1 is in condition for allowance.

Dependent Claims 2, 3, and 36

Claims 2, 3, and 36 depend from claim 1 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 4

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 4 is in condition for allowance.

Dependent Claims 5-14

Claims 5-14 depend from claim 4 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 15

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 15 is in condition for allowance.

Dependent Claims 16-19

Claims 16-19 depend from claim 15 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 20

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 20 is in condition for allowance.

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Dependent Claims 21-24

Claims 21-24 depend from claim 20 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 25

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 25 is in condition for allowance.

Dependent Claim 26

Claim 26 depends from claim 25 and is similarly patentable. Accordingly, it is respectfully submitted that claim 26 is in condition for allowance.

Independent Claim 27

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 27 is in condition for allowance.

Dependent Claims 28-31

Claims 28-31 depend from claim 27 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 32

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 32 is in condition for allowance.

Dependent Claims 33-35

Claims 33-35 depend from claim 32 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

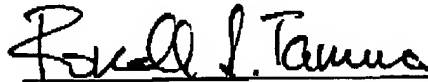
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**CONCLUSION**

In light of the above claim amendments and remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,

1/5/08  
Date



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Enclosure: Terminal Disclaimer Under 37 CFR 1.321(c)

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